IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 606 OF 2002

Dilip Mahipati Padval ....Appellant.
V/s (Orig.Accd.)
The State of Maharashtra ....
Respondents.

Mr.Abhaykumar Apte, Adv. for the appellant.

Mr.P.S.Hingorani, APP for the State.

CORAM: V.G. PALSHIKAR
AND
SMT.NISHITA MHATRE, J.

11th Oct., 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned IInd Additional Sessions Judge, Pune in Sessions Case No.255 of 2001 on 25.04.2002 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. Advocate for the appellant-accused was absent. However taking into consideration the fact that the case is pending for the last six years we deemed it just and proper to decide the case on merits with the assistance of the learned Additional Public Prosecutor. We have scrutinized the entire evidence on record and reappreciated the same.

3. The prosecution story stated briefly is that the accused was married to the victim and the wedlock produced three children. The accused was in the habit ill treating the wife. On 18.1.2001 the victim Sima was admitted to hospital in burnt condition and therefore the matter was reported to the police. The victim disclosed that she was burnt by her husband therefore police also were required to call for recording of dying declaration. On the basis of this complaint investigation was conducted, accused was arrested and prosecuted. The prosecution examined six witnesses to prove its case that it was the accused who committed the murder of his wife by burning her to death.

4. There are two dying declarations on record, one recorded by the Special Executive Magistrate and the other recorded by the police. Apart from this evidence, six witnesses have been examined. P.W.1-Genu Bodake is the panch witness who proves the spot panchnama. PW2 is the doctor who examined the patient on admission and states before the Court that the patient was in burnt condition and patient informed him that she was burnt by her husband. He states that he then informed the police, examined the patient and certified that the patient was in condition to depose.

5. PW3-Chimaji Kadam the father of victim who was told by the victim that she was burnt by her husband. The witness also deposes of

earlier ill treatment by the accused to his wife. PW4-Shankar Patil is the Special Executive Magistrate who recorded dying declaration of the victim. He saw the doctor examining the patient and endorsed that the patient was in condition, physical and mental, to give deposition.

6. PW5 is another doctor who was present when the other dying declaration was recorded. He also testified that the patient was well oriented and physically capable of giving statement. PW6-Satish Nikam is the investigating officer. It was on the basis of appreciation of this evidence that the learned trial Judge accepted the evidence and convicted the accused for causing murder of his wife by burning her.

7. We have scrutinized both the dying declarations. They are duly corroborated by testimony of two doctors and the Special Executive Magistrate apart from the investigating officer. Each of them have testified that they heard the victim saying that she was burnt by her husband. There is no material difference between the two statements. The evidence of the father of the victim also corroborates her dying declaration to the extent that the accused was in the habit of ill treating her. The order recorded by the learned trial Judge therefore is based on proper appreciation of evidence on record. The findings given by the learned trial Judge are correct and legal and on our reappreciation of evidence we are also of the view that the prosecution has proved beyond reasonable doubt that it was the accused who

killed the wife by burning her to death. In the result, therefore, the appeal fails and is dismissed.